

## **DETAILED ACTION**

### ***Response to Amendment***

1. The request for continued examination filed on March 26, 2009 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s):

In the Final Office action mailed on December 26, 2008, and the subsequent Advisory action mailed on March 3, 2009 the applicants were advised to cancel the non-elected withdrawn claims 18-28 in their reply to the office action. The applicants have not cancelled these claims in their amendment filed on March 26, 2009. First of all, Examiner would like to point out that in the Applicant's response to restriction/election filed on August 6, 2007, the election was not made with traverse. Because applicants did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Secondly, the inventions were restricted as sub-combinations usable together and not as an apparatus and a corresponding process. Thirdly, in order to be eligible for rejoinder, a claim to a nonelected invention must depend from or otherwise require all the limitations of an allowable claim. A withdrawn claim that does not require all the limitations of an allowable claim will not be rejoined. Furthermore, where restriction was required between a product and a process of making and/or using the product, and the product invention was elected and subsequently found allowable, all claims to a nonelected process invention must depend from or otherwise require all the limitations of an allowable claim for the claims directed to that process invention to be eligible for rejoinder. See MPEP § 821.04(b). In order to retain the right to rejoinder, applicant is advised that the claims to the nonelected invention(s) should be amended during

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prosecution to require the limitations of the elected invention. Failure to do so may result in a loss of the right to rejoinder. Fourthly, the restriction requirement mailed on July 6, 2007 states “where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a)”. The potentially allowable subcombination is the one that has been elected and examined. There are no claims in the withdrawn subcombination that depend on the elected subcombination or otherwise require all the limitations of the allowable subcombination.

Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS THE PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Narayanswamy Subramanian whose telephone number is (571) 272-6751. The examiner can normally be reached Monday-Thursday from 8:30 AM to 7:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles R. Kyle can be reached at (571) 272-6746. The fax number for Formal or Official faxes and Draft to the Patent Office is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PMR or Public PAIR. Status

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information for unpublished applications is available through Private PMR only. For more information about the PMR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Narayanswamy Subramanian/  
Primary Examiner,  
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June 10, 2009